

Feb 06, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming
limited liability company, MARK
FERRIS, an individual, MATT FERRIS,
an individual, and AMBER PAUL, an
individual,

Plaintiffs,

vs.

KROMTECH ALLIANCE
CORPORATION, a German corporation,
CHRIS VICKERY, an individual, CXO
MEDIA, INC., a Massachusetts
corporation, INTERNATIONAL DATA
GROUP, INC., a Massachusetts
corporation, and STEVE RAGAN, an
individual, and DOES 1-50,

Defendants.

No. 2:17-cv-105-SAB

Protective Order

1. This Order shall govern “CONFIDENTIAL INFORMATION,” which term shall refer to documents, material or information produced in connection with the lawsuit and designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in accordance with this Order, including, but not limited to, any type of document

1 or testimony; any taped, recorded, written or typed matter, including the originals and all
2 marked copies, whether different from the originals by reason of any notation made on
3 such copies or otherwise; all deposition testimony; all interrogatories, documents requests,
4 and requests for admission, including all responses thereto; and any physical objects or
5 other items or any other information gained by inspection of any tangible thing.
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7 The parties desire that CONFIDENTIAL INFORMATION designated in
8 accordance with this Order shall be treated according to the terms of this Order, and the
9 dissemination of the information in the CONFIDENTIAL INFORMATION is restricted as
10 provided herein.
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12 2. Each page of CONFIDENTIAL INFORMATION that a party designates shall
13 be stamped with the legend "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
14 EYES ONLY" prior to its production or, if inadvertently produced without such legend,
15 by promptly upon discovery furnishing written notice to the receiving party that the
16 information or document shall be treated as "CONFIDENTIAL" or "CONFIDENTIAL-
17 ATTORNEYS' EYES ONLY" under this Order. Any stamping or marking shall be made
18 so as not to interfere with the legibility of each such stamped or marked document.
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21 a. "CONFIDENTIAL": The "CONFIDENTIAL" designation shall be
22 limited to confidential information that is used by a party in, or pertaining to, its
23 business, which information is generally not known and which that party would
24 normally not reveal to third parties or, if disclosed, would require such third parties
to maintain in confidence. "Confidential Information" as used herein means: trade
secrets or other confidential research, development, or commercial information that

1 the designating party believes to be of a proprietary business, financial, or technical
2 nature, and not readily available to competitors or potential competitors, and
3 information of employees who are not parties to this lawsuit.

4 b. “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”: The
5 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” designation shall be limited to
6 highly confidential information of the most sensitive nature, which if disclosed to
7 persons of expertise in the area would reveal significant technical or business
8 advantages of the producing or designating party, and which includes as a major
9 portion subject matter that is believed to be unknown to the opposing party, or any
10 employees of the opposing party, including any confidential personnel or financial
11 information (including any account or credit card information) of a party or third-
12 party.

13 3. CONFIDENTIAL INFORMATION does not include documents, material or
14 information that are:

- 15 a. independently developed by the receiving party without use of or
16 reliance upon any of the disclosing party’s CONFIDENTIAL
17 INFORMATION;
- 18 b. rightfully acquired by the receiving party from an independent source,
19 without restrictions as to use or obligations as to confidence;
- 20 c. prior to disclosure, rightfully in the possession or knowledge of the
21 receiving party without restrictions of confidentiality;
- 22 d. publicly available in substantially the same form in which it was
23 provided by the disclosing party claiming confidentiality;
- 24 e. required by law to be made available to third parties; or
- f. public knowledge by means not in violation of this Order.

4. Documents designated as “CONFIDENTIAL” may be used by the party

1 receiving it only for purposes of this lawsuit and may not be disclosed to any person without
2 the prior written consent of the party producing it or an order of the Court, except that it
3 may be disclosed to:
4

- 5 a. the Court;
- 6 b. counsel for the Parties, to be used for purposes of this lawsuit only;
- 7 c. counsel's employees, to be used for purposes of this lawsuit only;
- 8 d. Outside experts or consultants retained or in good faith proposed to be
9 retained for the purpose of assisting counsel in the prosecution or
10 defense of this litigation or testifying at trial, to the extent deemed
11 necessary in good faith by the retaining counsel to enable a consultant
12 or expert to evaluate the proposed retention and/or provide such
13 assistance or testimony (and clerical personnel of each such consultant
14 or expert); provided that the disclosure of Confidential Information to
15 such an expert or consultant shall be made only after counsel desiring
16 to disclose Confidential Information to such an expert or consultant
17 obtains a completed and signed undertaking in the form of Exhibit A
18 attached hereto from the expert or consultant;
- 19 e. the Parties and their respective members, officers, directors, and
20 employees, to be used for purposes of this lawsuit only; and
- 21 f. witnesses in depositions and any hearings before the Court, including
22 hearings on motions brought by the Parties, to be used for purposes of
23 this lawsuit only.
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25 5. CONFIDENTIAL INFORMATION designated as "CONFIDENTIAL-
26 ATTORNEYS' EYES ONLY" may be used by the party's counsel receiving it only for
27 purposes of this lawsuit and may not be disclosed to any person, including the receiving
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1 party, without the prior written consent of the party producing it or an order of the Court,
2 except that it may be disclosed to:

- 3 a. the Court;
- 4 b. counsel for the Parties, to be used for purposes of this lawsuit only,
- 5 c. counsel's employees, to be used for purposes of this lawsuit only,
- 6 d. Outside experts or consultants retained or in good faith proposed to be
7 retained for the purpose of assisting counsel in the prosecution or
8 defense of this litigation or testifying at trial, to the extent deemed
9 necessary in good faith by the retaining counsel to enable a consultant
10 or expert to evaluate the proposed retention and/or provide such
11 assistance or testimony (and clerical personnel of each such consultant
12 or expert); provided that the disclosure of Confidential Information
13 designated Confidential-Attorneys' Eyes Only to such an expert or
14 consultant shall be made only after counsel desiring to disclose
15 designated Confidential-Attorneys' Eyes Only to such an expert or
16 consultant obtains a completed and signed undertaking in the form of
17 Exhibit A attached hereto from the expert or consultant; and
- 18 e. the specific person(s) who appear(s) on the face of the document to
19 have authored or received it or his, her, or its authorized
20 representative(s), to be used for purposes of this lawsuit only.

21 6. Any document containing financial account or credit card numbers will be
22 treated as CONFIDENTIAL ATTORNEY'S EYES ONLY regardless of whether marked
23 as such.

24 7. Subject to paragraphs 4 and 5, no disclosure of CONFIDENTIAL
INFORMATION received from another party shall be made to any person under
subparagraphs 4(d), 4(e), 4(f), or 5(d), until such person has been advised of this Order and

1 has signed the Confidentiality Agreement attached hereto as Exhibit “A.”

2 8. No person who has agreed to be bound, or who is ordered bound, by this Order
3 may use or disclose any CONFIDENTIAL INFORMATION, except as provided herein.
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5 9. If documents, material, information or testimony is sought in discovery in this
6 lawsuit from a person (including any business entity) who is not a party, and such person
7 or any party reasonably believes that the information sought is CONFIDENTIAL
8 INFORMATION, such person or party may designate such information as
9 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in accordance
10 with the provisions of this Order.
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12 10. A party may contest a confidentiality designation by notifying the designating
13 person or party, in writing, that the receiving party objects to the particular confidentiality
14 designation. Those involved shall work together in good faith to resolve the objection. If
15 no resolution is reached, the party contesting the designation shall file a motion with the
16 Court within fifteen (15) days of the unsuccessful conference, seeking resolution of the
17 objection.
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19 11. A dispute as to confidentiality shall not be grounds for delay of or for a refusal
20 to permit discovery. All of the documents, material, or information that are the subject of
21 the dispute will continue to be subject to this Order unless and until the Court rules
22 otherwise. No presumption of confidentiality shall arise merely because of the existence
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1 of this Order.

2 12. Whenever CONFIDENTIAL INFORMATION is to be referred to or
3 disclosed in a hearing, deposition, or any other proceeding in this lawsuit, any party
4 claiming confidentiality may seek to exclude from the room any person who is not entitled
5 to receive CONFIDENTIAL INFORMATION and may request that the Court seal any
6 record of such proceedings.
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8 13. Any party may designate a deposition or portion thereof as
9 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” by
10 denominating by page and line those portions of the deposition which are to be considered
11 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” within
12 fourteen (14) days of receiving the transcript and so informing all other parties of such
13 designation. Each party shall attach a copy of such written statement or statements to the
14 face of the transcript and each copy thereof in its possession, custody, or control. Until the
15 fourteen-day period to designate deposition testimony as “CONFIDENTIAL” or
16 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” has passed, the deposition transcript
17 shall be treated as “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” Additionally, a
18 Party may orally designate testimony as “CONFIDENTIAL” or “CONFIDENTIAL-
19 ATTORNEYS’ EYES ONLY” during the course of a deposition, in which case the court
20 reporter and/or videographer shall transcribe and/or record the testimony so designated in
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1 a separate volume marked “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEY’S
2 EYES ONLY.” Any party noticing a deposition shall provide a copy of this Order to any
3 court reporter, videographer, or other person hired to record the deposition. Any portion
4 of a deposition designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’
5 EYES ONLY” shall not be filed with the Court, except in accordance with this Order.
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7 14. If CONFIDENTIAL INFORMATION is to be filed with the Court, it shall be
8 the responsibility of the filing party to move the Court for permission to file such papers
9 under seal. The Court will review the motion and determine whether good cause exists to
10 file the document under seal.
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12 15. If CONFIDENTIAL INFORMATION is disclosed in violation of this Order,
13 the party who learns of such a disclosure shall (a) inform the other party of the disclosure,
14 including the specific document(s) and information disclosed, when the disclosure occurred,
15 and the identity of the person(s) to whom the disclosure was made; (b) use its best efforts to
16 retrieve all copies of the disclosed document(s); (c) upon request by the producing party,
17 request that the person(s) who received the unauthorized disclosure execute the undertaking
18 in the form of Exhibit A attached hereto; and (d) make every effort to prevent any further
19 disclosure in violation of this Order.
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22 16. Nothing in this Order prevents any party or other person from seeking
23 modification of this Order or from objecting to disclosure or discovery it believes to be
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1 otherwise improper. In particular, nothing in this Order precludes any party from seeking
2 and obtaining, on an appropriate showing, such additional protection for any information,
3 document, or thing as the party may consider appropriate in the circumstances.
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5 17. Should any court, administrative agency, person, or entity subpoena
6 production of CONFIDENTIAL INFORMATION from a party who obtained such
7 information under the terms of this Order, such party shall promptly notify the designating
8 party of the pendency of such subpoena before disclosing such information. If the
9 designator timely seeks a protective order, the party served with the subpoena or court
10 order shall not produce any such CONFIDENTIAL INFORMATION before a
11 determination by the court where the subpoena or order issued, unless the party has
12 obtained the designator's permission
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15 18. Inadvertent or unintentional production of documents, material, or
16 information containing CONFIDENTIAL INFORMATION that are not designated
17 according to this Order is not a waiver in whole or in part of a claim for confidential
18 treatment. In addition, CONFIDENTIAL INFORMATION previously produced or
19 disclosed by the Parties may be subsequently designated according to this Order. The
20 receiving party shall have no liability for any disclosure of undesignated CONFIDENTIAL
21 INFORMATION before the receiving party was placed on notice of the producing or
22 disclosing party's designation of such CONFIDENTIAL INFORMATION.
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1 19. If information subject to a claim of attorney-client privilege, attorney work
2 product, or any other ground on which production of such information should not be made
3 to any party is nevertheless inadvertently produced to a party or parties, Federal Rule of
4 Civil Procedure 26(b)(5)(B) shall apply. If a party moves the Court for an order compelling
5 production of the material, said motion shall not assert as a ground for entering such an
6 order the fact or circumstance of the production of the information. Further, pursuant to
7 Federal Rule of Evidence 502(d) and (e), the parties agree that the inadvertent disclosure
8 of a communication or information covered by the attorney-client privilege or work
9 product protection does not constitute a waiver of the attorney-client privilege or work
10 product protection in this proceeding or any other state or federal proceeding. Nothing in
11 this provision shall restrict a party from challenging, in any way, the propriety of the
12 privilege claim after the material or information has been returned to the producing party.
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16 20. A party may disclose information that it has designated as CONFIDENTIAL
17 INFORMATION to any person at any time without regard to this Order.
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19 21. Within thirty (30) days of final disposition of this lawsuit (whether by
20 judgment, settlement or otherwise), including all appeals, each party, at its election, shall
21 either request that all CONFIDENTIAL INFORMATION designated under this Order be
22 returned or destroyed. In response, the other party will either destroy the CONFIDENTIAL
23 INFORMATION and provide a letter certifying such destruction or return the
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1 CONFIDENTIAL INFORMATION and destroy all copies, extracts, and summaries of
2 such CONFIDENTIAL INFORMATION. For archival purposes, the attorneys in the law
3 firms or legal departments representing the Parties may retain one copy of all pleadings,
4 transcripts, exhibits, written discovery responses, documents, including portions
5 designated under this Order, and any written work product that mentions or includes
6 CONFIDENTIAL INFORMATION.
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9 22. Upon final termination of this lawsuit (whether by judgment, settlement, or
10 otherwise), including all appeals, the provisions of this Order shall continue to be binding,
11 except with respect to those documents, materials, and information that become a matter
12 of public record.

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14 23. This Order is binding upon the Parties and their attorneys, successors,
15 executors, personal representatives, administrators, heirs, legal representatives, assigns,
16 subsidiaries, divisions, employees, agents, independent contractors, or other persons or
17 organizations over which they have control.

18
19 **DATED** this 6th day of February 2018



A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

Stanley A. Bastian
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming
limited liability company, MARK
FERRIS, an individual, MATT FERRIS,
an individual, and AMBER PAUL, an
individual,

Plaintiffs,

vs.

KROMTECH ALLIANCE
CORPORATION, a German corporation,
CHRIS VICKERY, an individual, CXO
MEDIA, INC., a Massachusetts
corporation, INTERNATIONAL DATA
GROUP, INC., a Massachusetts
corporation, and STEVE RAGAN, an
individual, and DOES 1-50,

Defendants.

No. 2:17-cv-105-SAB

Confidentiality Agreement

1. I certify that I have received and have carefully read the Protective Order (“Order”) in the above-captioned civil action and that I fully understand the terms of the Order. I recognize that I am bound by the terms of that Order, and I agree to comply with those terms.

2. I understand that the distribution of any material or documents subject to the Order, or the dissemination of any information contained in them, is expressly prohibited, except as necessary to discuss such information with the attorneys of record in this case.

3. I agree that I will not distribute or disseminate any such material or documents or any information contained in them, except to the attorneys of record in this case. I agree to deliver to such attorneys any report, summary of expected testimony, or written opinion containing information designated as Confidential in a sealed envelope clearly marked, "Confidential-Subject to Order."

4. I understand that the original of this Confidentiality Agreement will be retained by the attorneys of record for _____ [party] and that a copy of this agreement will be sent to the attorneys of record for _____[adverse parties].

Dated: _____, 201__.

Printed Name: _____

Affiliation: _____

Address: _____

Address: _____

Telephone: _____